

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ERIE DIVISION

ANA L. FRANK,	:	
	:	
Plaintiff,	:	Civil Division
	:	
v.	:	
	:	No. 1:22-cv-20
EDWARD J. SMITH; and	:	
XPO LOGISTICS FREIGHT, INC.,	:	<u>Jury Trial Demanded</u>
	:	
Defendants.	:	
	:	

SECOND AMENDED CIVIL COMPLAINT

AND NOW, comes Plaintiff, ANA L. FRANK, by and through her attorneys, THE TRAVIS LAW FIRM, P.C., and files the within SECOND AMENDED COMPLAINT against Defendants, EDWARD J. SMITH and XPO LOGISTICS FREIGHT, INC., stating in support as follows:

1. Plaintiff ANA L. FRANK is an adult individual who resides at 1418 West 11th Street, Apt. 3, Erie, PA 16502.
2. Defendant EDWARD J. SMITH is an adult individual who upon information and belief resides at 20 Lancaster Avenue, Lancaster, New York, 14086.
3. Defendant XPO LOGISTICS FREIGHT, INC. ("XPO") is a corporation organized under the laws of the state of Indiana with a principal place of business at 3200 Industries Drive, Richmond, Indiana 47374.
4. The facts and events hereinafter described occurred on or about January 18, 2020, at approximately 7:25 a.m. on Route I-90 in Erie County, North East Township, Pennsylvania.

5. At all times material hereto, Plaintiff, ANA L. FRANK, operated a 2016 Kia Sportage, bearing Pennsylvania license plate 25844138 (VIN KNDPBCAC9G7821330).

6. At all times material hereto, Defendant EDWARD J. SMITH, operated a 2014 Westernstar Freightliner, bearing Indiana license plate 2494730 (VIN 3AKBGADV2ESFY7257).

7. At all times material hereto, Defendant EDWARD J. SMITH was an agent, servant and employee of Defendant XPO LOGISTICS FREIGHT, INC., and acted with the express and implied authority of Defendant XPO LOGISTICS FREIGHT, INC., in furtherance of the business interests of said Defendant.

8. On or about January 18, 2020, at approximately 7:25 a.m., Plaintiff ANA L. FRANK was the driver of a 2016 Kia Sportage traveling eastbound on Interstate 90 in Erie County, North East Township, Pennsylvania.

9. At that same time and place, Defendant EDWARD J. SMITH was operating a 2014 Westernstar Freightliner, owned by Defendant XPO LOGISTICS FREIGHT, INC., traveling eastbound on Interstate 90 in Erie County, North East Township, Pennsylvania, behind Plaintiff ANA L. FRANK.

10. Defendant EDWARD J. SMITH failed to slow the vehicle owned by XPO LOGISTICS FREIGHT, INC. and crashed directly into the rear of Plaintiff ANA L. FRANK's vehicle, which then propelled her vehicle into the rear of the vehicle traveling ahead of her, with her vehicle eventually coming to rest after being thrust into the highway median strip.

11. Plaintiff ANA L. FRANK sustained injuries as a result of the crash caused by Defendant EDWARD J. SMITH, and include, but are not limited to:

- (a) Neck Pain;
- (b) Back pain;
- (c) Migraine headaches;
- (d) Vertigo;
- (e) Tinnitus;
- (f) Miscarriage of unborn child;
- (g) Post-Traumatic Stress Syndrome (PTSD);
- (h) Panic Attacks;
- (i) Anxiety; and
- (j) Severe shock, strain or sprain of the nerves, muscles, tissues,

ligaments and vessels of the musculoskeletal system.

12. The accident has left Plaintiff ANA L. FRANK susceptible to additional injuries in the future to those areas weakened by the accident.

13. Some or all of the injuries of Plaintiff ANA L. FRANK may be permanent in nature, and all of which caused her pain and suffering since the crash and which may cause her pain and suffering in the future.

14. As a further result of the aforesaid, Plaintiff ANA L. FRANK has suffered severe physical pain and suffering, discomfort, mental pain and suffering, mental anguish, anxiety, humiliation, an inability to pursue her usual activities, and loss of enjoyment of life, and she may continue to suffer the same for an indefinite period of time in the future to her great detriment and loss.

15. As a further result of the aforesaid, Plaintiff ANA L. FRANK has been obliged to receive and undergo medical attention and care and has had to incur various expenses in an

attempt to cure said injuries, and Plaintiff may be obliged to continue to expend such sums or incur such expenditures for an indefinite period of time in the future, and claim is made therefor.

16. As a result of Plaintiff ANA L. FRANK's ongoing medical expenses, medical and health insurance liens may be asserted against her, and claim is made therefor.

17. As a result of the aforementioned injuries, Plaintiff ANA L. FRANK has sustained work loss, lost income, loss of opportunity and a permanent diminution of his earning power and capacity, and claim is made therefor.

18. Plaintiff ANA L. FRANK was a full tort insured at the time of the accident.

COUNT I - NEGLIGENCE

ANA L. FRANK V. EDWARD J. SMITH

19. Plaintiff incorporates by reference hereto all general allegations set forth in paragraphs 1 through 18 above.

20. At all times relevant hereto, Defendant, EDWARD J. SMITH, was an agent, servant and/or employee of Defendant, XPO LOGISTICS FREIGHT, INC.

21. At all times relevant hereto, Defendant, EDWARD J. SMITH, was acting in the course and scope of his employment and with the express and/or implied authority of Defendant XPO LOGISTICS FREIGHT, INC. and/or in the furtherance of its business interests.

22. The foregoing accident and all of the injuries and damages set forth hereinafter sustained by Plaintiff ANA L. FRANK are the direct and proximate result of the negligent and careless manner that Defendant EDWARD J. SMITH operated the motor vehicle owned by XPO LOGISTICS FREIGHT, INC., which consisted of the following:

(a) failing to keep alert and maintain a proper watch for the presence of others on the roadway;

(b) failing to notice Plaintiff ANA L. FRANK'S vehicle;

(c) failing to have his vehicle under such control as to be able to stop within the assured clear distance ahead;

(d) failing to apply his brakes in sufficient time to avoid striking the vehicle of Plaintiff ANA L. FRANK;

(e) failing to keep his eyes on the roadway;

(f) failing to pay attention to the roadway;

(g) operating a motor vehicle while distracted;

(h) operating a motor vehicle when he was not properly licensed and/or trained to do so;

(i) operating his vehicle when he knew or should have known that he was not sufficiently capable or experienced to do so safely and prudently; and

(j) permitting his vehicle to strike and collide with the rear of the vehicle operated by Plaintiff ANA L. FRANK.

23. As a direct and proximate result of negligence of the Defendant EDWARD J. SMITH, as set forth above, the Plaintiff, ANA L. FRANK was injured as set forth in paragraph 11, *supra*.

WHEREFORE, Plaintiff ANA L. FRANK demands judgment in her favor against Defendant EDWARD J. SMITH for all damages recoverable under the law and in an amount in excess of seventy-five thousand dollars (\$75,000.00), together with the costs of this action.

COUNT II - NEGLIGENCE

ANA L. FRANK V. XPO LOGISTICS FREIGHT, INC.

24. Plaintiff incorporates by reference hereto all general allegations set forth in paragraphs 1 through 23 above.

25. At all times material hereto, Defendant EDWARD J. SMITH, was an agent, servant, and/or employee of Defendant XPO LOGISTICS FREIGHT, INC.

26. At all times relevant hereto, Defendant EDWARD J. SMITH, was acting in the course and scope of his employment and with the express and/or implied authority of Defendant XPO LOGISTICS FREIGHT, INC. and/or in the furtherance of its business interests.

27. All of the resultant damages sustained by Plaintiff, ANA L. FRANK, were the direct and proximate result of the negligent conduct of the Defendant, XPO LOGISTICS FREIGHT, INC., as follows:

- (a) on the basis of respondeat superior for the negligence of its agent, Servant, and/or employee, Defendant EDWARD J. SMITH, as detailed hereinabove at Paragraph 22, the same being incorporated herein at length.

28. As a direct and proximate result of negligence of the Defendant XPO LOGISTICS FREIGHT, INC., as set forth above, the Plaintiff, ANA L. FRANK was injured as set forth in paragraph 11, *supra*,

WHEREFORE, Plaintiff ANA L. FRANK demands judgment in her favor against Defendant XPO LOGISTICS FREIGHT, INC. for all damages recoverable under the law and in an amount in excess of seventy-five thousand dollars (\$75,000.00), together with the costs of this action.

A JURY TRIAL BY TWELVE (12) IS HEREBY DEMANDED.

Respectfully Submitted,

THE TRAVIS LAW FIRM, P.C.

By: /s/ Dara M. Bucholtz
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100 State Street, Suite 210
Erie, PA 16507

Attorneys for Plaintiff